

TOWN OF LAUDERDALE-BY-THE-SEA

CHARTER REVIEW BOARD

Jarvis Hall

4505 Ocean Drive

Wednesday, April 10, 2013

6:30 PM

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE TO THE FLAG**
- 4. APPROVAL OF MINUTES**
 - a** March 21, 2013 Meeting Minutes
- 5. PUBLIC COMMENTS**
- 6. REPORT**
- 7. OLD BUSINESS**
 - a** Article VII. Planning and Zoning - Remaining Changes Being Considered by Board
 - b** Memo Re Proposed Actions and Issues with Other Articles of Charter
- 8. NEW BUSINESS**
- 9. FUTURE BUSINESS**
 - a** Next Meeting Date
- 10. ADJOURNMENT**

PROCEDURES FOR PUBLIC:

Charter Review Board Meeting Agenda Wednesday, April 10, 2013

State your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Board Member please do so by use of their title.

If you wish to approach the dais to hand out a document or for some other reason, please state your reason for doing so. All documents to be provided to the Charter Review Board should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Charter review Board meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner.

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE CHARTER REVIEW BOARD. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

Charter Review Board Meeting Agenda
Wednesday, April 10, 2013

TOWN OF LAUDERDALE-BY-THE-SEA

CHARTER REVIEW BOARD

MEETING MINUTES

Jarvis Hall

4505 Ocean Drive

Monday, March 21, 2013

6:30 P.M.

1. CALL TO ORDER

Chairperson Wessels called the meeting of the Charter Review Board (CRB) to order at 6:30 p.m.

2. ROLL CALL

Chairperson David Wessels, Vice Chairperson Susan Delegal, Charles Clarke, Sandra Green, Ronald Piersante and Jim Silverstone were present. Also present Town Attorney Susan Trevarthen, Town Planner Linda Connors and Acting Deputy Town Clerk Tedra Smith.

Chairperson Wessels indicated Mr. Brandt requested the Board approve his absence as excused.

Ms. Delegal made a motion to approve Mr. Brandt absent excused. Mr. Silverstone seconded the motion. The motion passed 6-0.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. APPROVAL OF MINUTES

a. February 7, 2013

Mr. Silverstone made a correction on page six, second paragraph, where it stated he made a motion that he had not. He believed the motion was made by Mr. Clark.

Mr. Clark agreed.

Mr. Silverstone noted a correction on page three; it stated the "Charter" failed to mention, it should say the "Board" failed to mention, referring to the Mayor voting last.

Mr. Clark made a motion to approve the above minutes as presented with the corrections noted on pages two and six. Mr. Silverstone seconded the motion. The motion passed 6-0.

5. PUBLIC COMMENTS

Chairperson Wessels opened the meeting to public comments.

Tom Carr felt most changes to the CRB would affect the southern part of the Town more. About six years ago, some 86 percent of the voters approved what was currently in the Town's Charter, including height limits and term limits.

Renee O'Neal doubted the voters wished to raise the existing height limits or reverse term limits, nor should the Commission be given the power to change neighborhood zoning; that power should be left in the hands of the voters.

Marc Furth, president of the CIC, mentioned an email he received from Lilianna, which was forwarded to the CRB members and Town staff. The email was addressed to the Town Manager, and he read it into the record, noting it stated some residents were unable to attend the CRB meeting, so they wished the following issues considered:

- CRB to reply via email that their comments were read into the record
- They objected to changes regarding: 1) raising zoned height limits; 2) take away voters' rights to decide neighborhood rezoning issues and giving the power to the Commission; 3) revising term limits for the Mayor.

He went on to remark on several comments from different Town Commissioners and wished to address Commissioner Dodd's, as it referred to the CIC. He read into the record the correspondence sent to him by Commissioner Dodd. It highlighted his displeasure at the CIC's attempting to attack members of the CRB, which the Town Commission was required to select for a review of the Town Charter every 12 years. Mr. Firth publicly apologized to the CRB if any of the CIC's actions were interpreted as an attack on them, though he did not think they had. As members of the public, the CIC had a right to publicly voice differences of opinions on the issues discussed. He realized the CRB made only recommendations, but they were strong suggestions being sent to the Commission, and Commissioner Dodd was wrong in feeling the CIC should be silent as to their objections at this point in the process. He had no desire to wait to give input at the second reading, after the Town Commission met with the CRB to discuss recommended changes and made decisions.

Joe Couriel thanked the CRB for their service to the Town, but stated the many hours they spent debating issues and recommending changes were for naught, as at the end of the process, none of the voters would approve them.

Stuart Dodd commended the residents serving on the CRB, noting he doubted they anticipated being harangued by numerous people who objected to any change. He stressed the CRB was free to make up their minds on any issues they felt should be addressed and not be influenced by the negativity. The CRB was convened as a requirement of the Town Charter, and though the CRB was free to make

recommendations, it was the Town Commission that made the ultimate decision to send something to a referendum. He noted the public had ample opportunity at both the first and second reading of ordinances advocating changes to the Charter, and they had the ability to contact individual Commissioners to express their opinions. The CRB had done a considerable study of the facts concerning the various Charter issues, many of which those voicing objections to changes might not have done. As such, the CRB should make recommendations as they saw fit as part of the democratic process.

Diane McSweeney expressed appreciation for the hours of work the CRB put in. She echoed objections to changes to existing height limits or term limits. Changes to height limits would only go to filling the pockets of builders, so she urged the CRB not to recommend any changes in this regard.

Cristie Furth thanked Vice Chairperson Delegal for accepting her invitation that was offered to all CRB members to visit their neighborhood to discuss the impacts raising the height limits would have on the local quality of life and the hotel business. She hoped Vice Chairperson Delegal saw firsthand how preserving small buildings along the Town's beachfront protected the few ocean vistas that were the hallmark of the Town. Having midrise hotels, such as Minto, running all along El Mar Drive would completely ruin the spirit of the Town's welcoming and accessible beach environment. She believed the Town's citizens worked tirelessly for decades through the democratic process of petitions, referendums and ballot votes to nail down a safety net that protected the public from the whim of politicians. Yet, it appeared the CRB chose to initiate a new battle over previously settled issues, and this was a call for citizens to act. Ms. Furth believed the entire historical character of Lauderdale-By-The-Sea was on the line when developers were given a green light to tear down the original beachfront. Everybody's neighborhood would be in jeopardy if the power to decide residential zoning issues was taken from the people and given to politicians. She noted the existing referendums on these three major issues demonstrated the civic pride of a small town community that fought for and maintained its power to control its destiny.

Patty Domin expressed her love for the Town, stating it was a beautiful place in which to live. She hoped the CRB took the steps to preserve those qualities of the Town.

Robert Lee supported the maintenance of the small-town nature of Lauderdale-By-The-Sea and felt frustration at issues, such as height limits and residential zoning, that kept being revisited in the Charter after voters made their wishes very clear years previous.

Marie Chiarello thanked the CRB for volunteering their time and hoped they would continue to work to clean up the Town Charter and not leave the Town's law so open to misinterpretation by people without a legal background. If simplified, the Charter could be understood by the average person. She heard no one on the CRB speak about raising height limits, yet there were residents that kept insisting they had. The same applied to the misinterpretations of the term limits of the Mayor.

Diane Kugler recognized the CRB were all volunteers and thanked them for serving, stating she valued what it took for them ponder the Town's very important issues. She too heard nothing in CRB's discussions about changing height limits and thought it was all about simplifying the Charter's language, and the prevailing misunderstanding among a variety of residents further justified the need for simplification. There might be some changes, and change could be hard.

Pat Murphy stated he understood the CRB sought to review and make some logical changes that he supported, as such decisions attracted revenue to the Town. He encouraged the CRB to continue to make their decisions based on facts, listen to the members of the public and ensure they had the facts on which to form their opinions. In this way, the Town could grow and in a manner that had community support.

Rosa Michailiuk thanked the CRB for volunteering their time. She questioned the need to revisit issues the voters already decided, as it wasted time. Major decisions should be left to the voters, despite the Commission's being elected by the people.

Barbara Cole knew being falsely accused of doing something one was not doing was a terrible position to be in. She had been away for some time and voiced her disagreement with Mr. Furth and other members of the public expressing similar sentiments, as she witnessed significant improvements in the Town upon her return after eight months. Various condominiums and businesses upgraded their structures, and she felt sure more improvements would be forthcoming. It was necessary to improve on whatever transpired 20, 30 years ago in order to move forward. She was unsure what the CRB would recommend, but she encouraged them not to be intimidated by articles in the press, as Board members knew how much research and time they invested in the issues they were discussing. There was nothing time wasting about revisiting issues that were already voted on, as things might have slipped by that created inequities that needed to be addressed. Ms. Cole thought it was too early in the process for such half truths and innuendos, and hoped the Town could put out some program to educate people on the steps in the Charter review process.

Craig Shaw asked the CRB to take into consideration the effects of their recommendations on population density.

Chairperson Wessels closed the public input portion of the meeting after receiving no further input.

6. REPORT

There were no reports.

7. OLD BUSINESS

a. Article VI. Elections – Section 6.3 changes requested in January

Town Attorney Trevarthen reviewed the subject item and the changes as illustrated in the backup.

Chairperson Wessels sought confirmation the existing term limits for the Mayor and Commissioners, as stated in the Town Charter would remain as is.

Town Attorney Trevarthen answered yes.

Chairperson Wessels commented the only change was whether the Mayor could, after serving the allowed three terms, could then run for a Commission seat without waiting.

Town Attorney Trevarthen remarked, based on the Town's districting, Mayor Minnet could not run for a seat on the Commission in the 2014 elections. Any recommended changes regarding Commission terms, if later passed, would not apply to Mayor Minnet, as the CRB indicated the proposed changes would be on the March 2014 ballot. In order to run in the 2014 election, a candidate had to qualify prior to that election.

Vice Chairperson Delegal agreed with the Town Attorney's analysis reflected in the backup. As any approval of the Board's recommendations would not happen until the 2014 elections, if passed, the positive was they would not affect any individual serving on the current Commission. She supported parity in the laws for elected officials, as she was a strong believer that the public voted persons into office, regardless of them having previously served or being new. Two-year terms for the mayoral office was beneficial to the voters, as it allowed them to make changes if they were dissatisfied.

Mr. Silverstone mentioned canvassing the public on their opinion of the Mayor being able to serve as a Commissioner after serving as the Mayor. He did considerable research and consulted with Town Attorney Trevarthen on the matter and concluded, as there was influence of the office of mayor, there should be a break in when he/she could run as a commissioner. Thus, the way the Charter should remain unchanged as to when a past mayor could run for a commission seat, as this was best for the Town. He supported parity in the ability of the mayor to run as a commissioner, which the Charter did not currently allow.

Mr. Piersante disagreed, as it was constantly repeated that the position of Mayor on the Town Commission was the same as a Commissioner, and someone who served as Mayor should not have to sit out two years before they could run as a Commissioner. He supported parity in the ability of elected officials to serve as the Mayor and as a Commissioner, but he wished the two-year terms for the Mayor to remain in place.

Mr. Clark believed in parity between the Mayor and Commissioners and thought the two-year wait after serving as a Mayor before running as a Commissioner should be removed. A 14-year limit on serving on the Town Commission, regardless of how it was broken up was sufficient, and the two-year term limit on the Mayor's position outlined in the Charter should remain.

Ms. Green noted her support of parity and the remaining of the two-year term for Mayor. With regard to influence, she believed it was implied that any person running for the Town Commission would have some influence, regardless of whether they served as the Mayor previously or not.

Chairperson Wessels thought the point was whether there were those who thought having the title of Mayor gave someone more influence in an election for a Commission seat. In his observations of the Town Commission over the last few years, he saw this as not necessarily the case, as influence was determined less by a title and based more on the individual. He supported parity among elected officials and felt the two-year term for the Mayor was satisfactory, as it made the individual more responsive to voters.

Town Attorney Trevarthen noted an additional change: no individual could serve more than three full terms as Mayor/Commissioner, and two full terms as Commissioner consecutively without a break in service, regardless of the order of service.

Ms. Green made a motion to approve the recommended changes related to Article VI. Elections – Section 6.3 to the Town Commission. Mr. Clark seconded the motion. The motion carried 5-1. Mr. Silverstone voted no.

b. Article VII. Planning and Zoning – Remaining Changes Being Considered by Board

Town Attorney Trevarthen went over the changes reflected in the backup, specifically the three remaining items for the Board to vote on. She reviewed all three in one presentation, as they were all interrelated.

1. First Floor uses: Instead of listing the uses allowed for the first floor of taller buildings, allow any non-habitable uses permitted by the applicable zoning district.

Chairperson Wessels explained the recommended change was to facilitate flexibility as non-habitable first floor uses to allow the incorporation of new uses currently in demand, such as a computer room or a gym.

Town Attorney Trevarthen stated it would not be open ended. The non-habitable first floor uses of a structure would be determined by the zoning district requirements in which it was located.

Vice Chairperson Delegal thought this a reasonable change to make in the Charter, as it did not change what was already allowable but allowed the Town to respond to and adapt to industry changes.

Mr. Silverstone noted, in speaking with members of the community, there was a concern the subject change could lead to unacceptable uses.

Town Attorney Trevarthen reiterated the allowable uses for non-habitable first floors would be guided by existing zoning district rules. The changes were meant to simplify

the meaning of the current language of the Charter with no changes to the allowable uses, while accommodating other acceptable uses not named in the Charter.

Mr. Piersante agreed with the changes in order to simplify the language.

Mr. Clark echoed support for the simplification.

Ms. Green expressed support for the simplification, stating time did not stand still, and flexibility was needed to accommodate issues as they arose.

Chairperson Wessels asked if, prior to the next Charter review in 12 years, there was a desired use that was not listed, could it be added without a referendum.

Town Attorney Trevarthen replied only if the use could not be interpreted to fall within one of the listed uses or argued as such.

Chairperson Wessels concurred with the need to create flexibility and supported the subject changes as detailed in the backup.

Mr. Silverstone made a motion to recommend the changes to first floor uses in Article VII. Planning and Zoning to the Town Commission as detailed in the backup and as just discussed. Mr. Piersante seconded the motion. The motion carried 6-0.

2. Height: Apply 44 feet only to the business and multifamily areas of Town, and leave the remaining single family and duplex areas at 33 feet. Describe these areas geographically, so that they will be affected by future changes in zoning. The 33 limit applies to all areas currently zoned RS-4, R-5, RS-5 and RD-10, with the exception of the RD-10 properties located between the Silver Shores Waterway and Sea Grape Drive, South of Marine Court to Hibiscus Ave. Properties are still subject to lower height limits in the Code of Ordinances as is the case currently.

Town Attorney Trevarthen and Town Planner Connors gave a presentation prepared by Town staff. The report summarized the impact of FEMA flood hazard areas on the requirements for the minimum finished floor elevations for habitable buildings, as provided in the backup. The main reason for the presentation was due to height limits only having a meaning if one knew where to start measuring at the bottom and where to stop measuring at the top. She noted the focus of the presentation was where one started measuring. The guidelines by which this was determined was based on three sources of law: FEMA, the Town Code and the Town Charter, with the latter using references from federal and state law.

Chairperson Wessels inquired, for those areas identified as flood zones and requiring flood insurance, could property owners free and clear of a mortgage opt out of getting flood insurance and risk bearing the loss themselves.

Town Attorney Trevarthen answered no, her understanding was that federal law required all property owners in flood zones to have flood insurance, but she reminded the Board the presentation only focused on building height and that individual property owners should determine their own obligations under federal law. She resumed the presentation.

Town Planner Connors pointed out, while she was unable to say exactly what the elevation was for every property, as it was a wide variation, it generally ranged from five to ten feet based on the info she received from Mr. Jason McClair of the Town Engineer's Office.

Chairperson Wessels commented the Board would continue to review the information in staff's presentation and determine if it had any questions, and continue its review at the next CRB meeting.

Town Planner Connors urged the Board to email her any questions they had, so the Town Attorney and staff would work to provide them with comprehensive answers at the next meeting.

Chairperson Wessels questioned if, considering the average elevation on El Mar Drive, there would be no significant adjustment.

Town Planner Connors responded on El Mar Drive or in the Town, she could not visualize where a full-size first floor would be required to be non-habitable, per FEMA or Town regulations. On El Mar, the focus was on the requirements for adjacent grade, not sea level.

* * *

Mr. Piersante asked if the plain English version of the Charter was available on the Town's website.

Town Attorney Trevarthen answered yes, it was originally placed on the website on July 2012.

Mr. Piersante encouraged members of the public to go to the Town's website and read the plain English version of the Town Charter. There were green tabs identifying the areas of the Charter discussed by the CRB and the current language of the Charter. For all of them, it clearly stated no change to the Charter could be brought about without a majority vote of the registered voters of the Town. Thus, he found it disturbing when members of the public remarked on the CRB endeavoring to take away the rights of the people and giving it to the Town Commission.

Town Attorney Trevarthen affirmed this to be the case, adding even if the Charter did not state this, only registered voters had the ability to change the Charter.

The rest of the meeting was deferred to the next CRB meeting on April 10, 2013, including:

3. Town Commission powers to amend Code: Delete all limits (currently, the Charter prevents the Town Commission from being able to create a new zoning district, rezone for another use, or add a use to zoning district, as other commissions may do.)

and

- c. Memo Re Proposed Actions and Issues with other Articles of Charter

Deferred to next CRB meeting on April 10, 2013.

8. NEW BUSINESS

None

9. FUTURE BUSINESS

- a. Next Meeting Date: April 10, 2013, at 6:30 p.m.

Town Attorney Trevarthen summarized at the next CRB meeting, the remaining changes to Article VII and Article V would be discussed.

10. ADJOURNMENT

With no further business before the Board, Chairman Wessels adjourned the meeting at 8:32 p.m.

Chairman David Wessels

ATTEST:

Vanessa Castillo, Town Clerk

Date

Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: April 3, 2013

Re: **Article VII “Planning and Zoning”: Summary of Changes to Consider in April and Changes Already Approved**

At its March 21 meeting, the Board received and reviewed a powerpoint presentation prepared by the Town Planner, Town Engineer and me, which attempted to provide better understanding of how the Charter height limits are actually implemented based on federal law, Florida law and Town Code. This information was intended to assist the Board in determining how it wishes to proceed on the last two issues it has identified in Article VII of the Charter, which are as follows:

1. *Height*: Apply 44 feet only to the business and multifamily areas of Town, and leave the remaining single family and duplex areas at 33 feet. Describe these areas geographically, so that they will not be affected by future changes in zoning. The 33 foot limit applies to all areas currently zoned RS-4, R-5, RS-5 and RD-10, with the exception of the RD-10 properties located between the Silver Shores Waterway and Sea Grape Drive, south of Marine Court to Hibiscus Avenue. Properties are still subject to lower height limits in the Code of Ordinances, as is the case currently.
2. *Town Commission powers to amend Code*: Delete all limits (currently, the Charter prevents the Town Commission from being able to create a new zoning district, rezone for another use, or add a use to a zoning district, as other commissions may do).

The Board decided to defer further discussion of these two issues to its April meeting. The Board needs to discuss the issues, and decide how it wishes to proceed.


The Charter Review Board already voted to forward some of the proposed changes to Article VII “Planning and Zoning” to the Town Commission for its review in January and March, as summarized below:

A. Plain English Version. Regardless of whether any substantive changes are made to Section 7.1, the Board proposes to adopt the “plain English” version of that section, which attempts to translate and clarify Section 7.1. **Adopted 6-0.**

B. Substantive Changes. The Board also proposes to adopt the following substantive changes, which have been drafted based on the plain English version of Section 7.1.

1. *First floor uses*: Instead of listing the uses allowed for first floors of taller buildings, allow any nonhabitable uses permitted by the applicable zoning district. **Approved in March 5-1.**
2. *Redundant provisions*: Remove provisions that are already true as a matter of law (e.g., the Town Commission cannot amend the Charter directly - only a vote of the people can amend the charter.) **Adopted 6-0.**
3. *Parking*: Delete parking regulations from the Charter. **Adopted 6-0.**
4. *Rooftop solar panels*: Add solar panels to the list of rooftop equipment that is exempt from the four foot height limit, along with air conditioning, elevator, and other similar equipment. **Adopted 5-0, 1 abstention.**
5. *Preservation of nonconforming setbacks*: Allow reconstruction of building with nonconforming setbacks, in addition to the preservation of nonconforming height and square footage already in the Charter. **Adopted 5-1.**

MEMORANDUM


TO: Susan Trevarthan, Esq. Town Attorney
FROM: Susan F. Delegal, Vice-Chair 
DATE: March 26, 2013
RE: Charter Review Board Agenda Item for April 10, 2013

I am providing to you the attached Memorandum directed to the Charter Review Board. I would appreciate it if you would place this Memorandum in the Charter Review Board's Agenda Packet for the meeting of April 10, 2013.

Thank you for your assistance.

MEMORANDUM

TO: Members of the Charter Review Board

FROM: Susan F. Delegal, Vice-Chair 

CC: Susan Trevarthen, Esq., Town Attorney

DATE: March 26, 2013

RE: Article VII, Section 7.1(9)

Over the course of the last few months, the Charter Review Board has reviewed and considered multiple proposed amendments to the Town's Charter, contained in Article VII, titled Planning and Zoning. We have heard citizens' comments, been informed by the Town staff and consultants on many substantive matters relating to this Article, and engaged in extensive debate. We all have spent many hours reviewing the back-up documents relating to this Article and considering the varied comments from our neighbors within the Town. The Board has taken action to move forward a number of issues relating to the Planning and Zoning provisions of the Charter to the Town Commission for its consideration for placement on the ballot in March of 2014.

As we have discussed many times during our meetings, the Charter provides for a Charter Review Board to convene every twelve (12) years to review the Charter and determine whether amendments should be proposed to the Town Commission for consideration of the electorate. This is the Board's sole and single purpose. In carrying out these responsibilities, it is appropriate to reflect upon changed circumstances within the Town, new and evolving changes in social, demographic, and economic factors affecting the Town, assure that obsolete or outdated language is improved, review technological advances and changes that may impact the operation of the Town, and, in general, determine whether revisions to the Charter could result in the betterment of the Town. Change simply for change's sake is not a goal of the Board; however periodic review of Charter provisions is a healthy and worthy process.

The Board Members may not always agree on all matters to be recommended to the Town Commission, but I believe that we can all agree that our charge is accomplished by allowing the democratic process to work. The Board's mission is to study the issues, accept input from those affected by our recommendations, and present the results of our work to the Town Commission.

As a result of the votes we have previously taken on the seven (7) issues relating to substantive changes to Article VII, Planning and Zoning, we are now down to two (2) issues as follows:

1. While maintaining the current height restrictions in the Charter, we are considering whether to amend the application of the height restrictions from a *time* based application to a *geographically or location* based application. At our meeting of March 21, we received a presentation regarding the FEMA regulations, flood hazard areas and zones, and the application of certain criteria to the height measurements included within the Charter and the Town's Code of Ordinances. This presentation was ably and professionally presented and very instructive as it relates to the issue of computation of height. On my part, I required additional time to evaluate the presentation, identify further questions, and utilize that information in the formulation of further recommendations with regard to height for consideration at the Board's next meeting.

2. The second issue to be further discussed and considered relates to the Town Commission's power to amend provisions of the zoning code contained in the Town's Code of Ordinances. Specifically, the proposal we have discussed would remove the current restrictions on the Town Commission to (a) create a new zoning district, (b) rezone a property for another use, or (c) add another use to a zoning district, only upon referendum approval. The proposal would allow the Town Commission to take these actions by ordinance after notice and public hearings. Concerns have been voiced during public hearings relating to these issues and the desire to maintain these powers in the electorate.

Relating to Item 2. above, and after considerable review of these matters in the context of the goals we hope to achieve in our recommendations, I plan to make a motion at the meeting of April 10, 2013, that the Charter Review Board determine to not recommend any amendments to the current restrictions on the Town Commission's power relating to rezoning and substantive provisions of the zoning districts. I believe our goal is to make credible and achievable recommendations to the Town Commission regarding all aspects of the Charter, which if approved by the voters will result in benefits to the governance of the Town of Lauderdale-By-The-Sea.

I wanted to provide my thoughts and intention to move this item at the Charter Review Board meeting to be held on April 10, 2013. Thank you for your consideration of my comments.

At the Charter Review Board's March meeting, based on the fact that the AO FIRM zone regulations are dependent upon the height of the adjacent grade, Commissioner Silverstone asked whether the Town had specific regulations to limit the amount of fill on a property. We have researched this question and found that the code regulates the elevation of filled land in Section 30-313 (p) which states:

Elevation of filled land. There shall be no land filled or elevated resulting in the elevation of the area in question above the natural elevation of the adjacent ground surface without first obtaining the approval of the Floodplain Administrator. In order to obtain review and approval by the Floodplain Administrator the applicant must first obtain the following:

- \(1\) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
- \(2\) A depiction of the elevation in relation to the adjacent property; and
- \(3\) Engineering calculations confirming that stormwater runoff will be retained on-site and that the proposed development will not create flooding issues on adjacent properties.

We understand from the Town's Engineer, who serves as the Town's floodplain administrator, that as a practical matter, it would be extremely expensive to meet the requirements of 30-313 (p) (3) if you are trying to substantially raise the height of the adjacent building by raising the elevation of the lot.

If you have further questions, please contact me or inquire at the next Charter Review Board meeting.

Thank you,

Linda

LINDA CONNORS

Town Planner

4501 N. OCEAN DRIVE,
LAUDERDALE-BY-THE-SEA, FL 33308

Phone: 954-640-4213 • Fax: 954-634-4654

www.lbts-fl.gov • lindac@lbts-fl.gov



Town of Lauderdale-By-The-Sea
**Summary of FEMA Flood
Hazard, Code and Charter
Requirements Affecting Height**

Purpose

- Summarize the impact of FEMA Flood Hazard Areas on the requirement for minimum finished floor elevation for habitable buildings.
- Using Plain English Version, explain how the minimum finished floor elevation relates to the maximum allowable building height.
- Provide information as requested to guide the Board's discussion of how the height regulations(FEMA, Town Code and Charter) jointly regulate the height to which you can build.

Flood Hazard Areas – Summary

FEMA – Flood Control Requirement

- Minimum finished floor elevation must be at or above the base flood elevation defined by each FEMA Flood Hazard Area.

Town Code – Flood Control Requirement

- Minimum finished floor elevation must be at least 24 inches above the elevation of the crown of the road – but Charter states that Code requires 18 inches above the crown of road.

Charter

- The Charter does not establish its own minimum finished floor elevation requirement. It refers to each of the two standards above and FL Building Code.

Town Code Definitions

Section 30-20(4), Town Code

- *Grade*. For the purpose of calculating building height or structure, *grade level* shall mean 24 inches above the crown of the highest adjoining road. . . .
- *Grade level, established*. The lowest habitable first floor elevation permitted by the regulations of all local, County, State and Federal government agencies having jurisdiction over the subject property.
- *Height*. The height of a building or structure is measured from *grade level* to the highest point of a flat roof or to the average median level between the fascia and peak of a gable or hip roof.

Town Code Ch 9 Provisions for Flood Hazard Reduction

- Buildings must be at least as high as the base flood elevation, or the depth required by the AO Zone designation (in Town, this is 2' to 3' above the adjacent elevation, which is generally an elevation similar to 24" above the crown of the road).

Florida Building Code

- Incorporates and follows Federal flood regulatory concepts

How to Apply Standards for Height

Charter Section 7.1 (1) (b) and (c)

- In general, the highest required level applies.
- For buildings after March 2006, the Charter currently measures height from grade in the FL Building Code **OR** the Town Code limit **OR** the minimum finished floor elevation under Federal or Florida Law.
- For older buildings, the Charter currently measures height from grade in the FL Building Code **OR** the Town Code limit .

What is Finished Floor Elevation?

- The Board has inquired as to what minimum finished floor elevation under Florida or Federal Law means as it is used in the Charter.
- Florida Law does not establish a separate minimum finished floor elevation – the Building Code references Federal flood regulations
- Federal Law establishes minimum finished floor elevation by mapping properties in the Town (FEMA Hazard Areas)

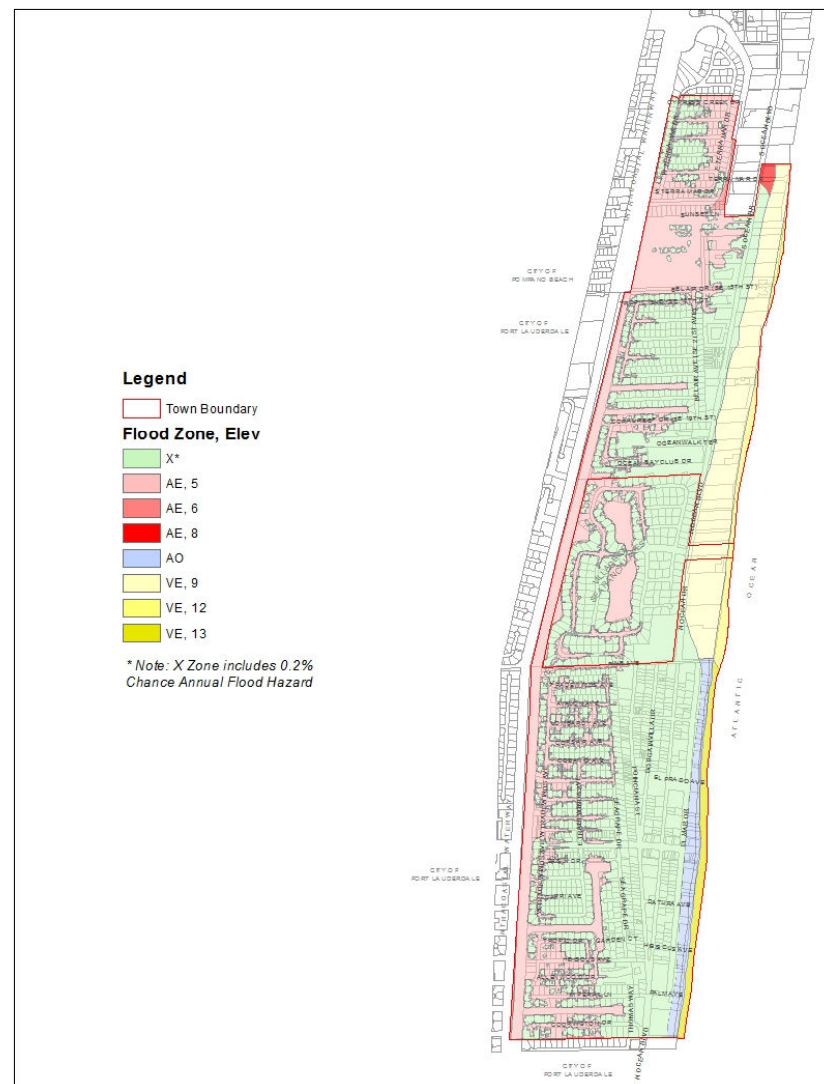
FEMA Regulations

- FEMA Flood Insurance Rate Maps (FIRM) identify Special Flood Hazard Areas (SFHA)
- SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year.
- The 1-percent annual chance flood is also referred to as the base flood or 100-year flood.
- Structures located within SFHA must obtain NFIP flood insurance.
- Minimum finished floor elevation is determined by which SFHA the property is located within on the FIRM maps.

FIRM Maps Changing

- FEMA had drafted new FIRM maps, which are under review. There is not a set time for adoption of these new FIRM maps.
- In the current draft available to the Town, the SFHA areas in Town have not significantly changed from the current FIRM maps.

Proposed FEMA Map

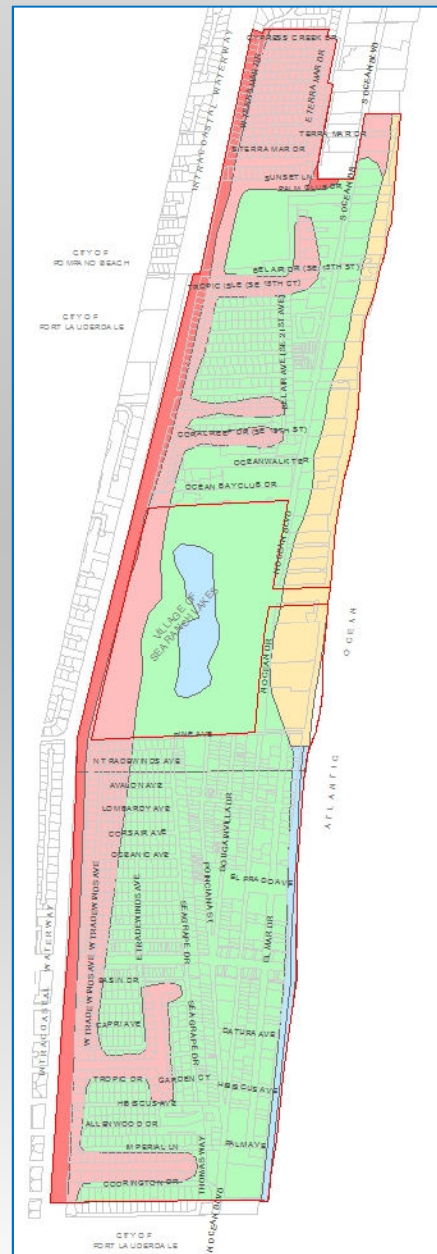


FEMA Flood Hazard Areas – Summary



Current FEMA Flood Hazard Areas mapped within Town Limits include:

- Zone X
- Zone AE
- Zone AO
- Zone VE






FEMA Flood Hazard Areas – Overview of Town Limits



Legend

-  Town Boundary
 Parcels

FZONE, ELEV

- | | |
|---|--------|
|  | AE, 6 |
|  | AE, 7 |
|  | AO |
|  | VE, 10 |
|  | X |

FEMA Flood Hazard Areas – Zone X Summary

- Zone X is only subject to moderate flood hazard. These are the areas between the limits of the base flood and the 0.2-percent-annual-chance (500-year) flood.
- NFIP Flood Insurance not required.
- No base flood elevation is established by FEMA for buildings.
- FEMA does not regulate in this area; therefore minimum finished floor elevation must only meet Town Code requirements (at least 24 [18 in Charter] inches above crown of road elevation).

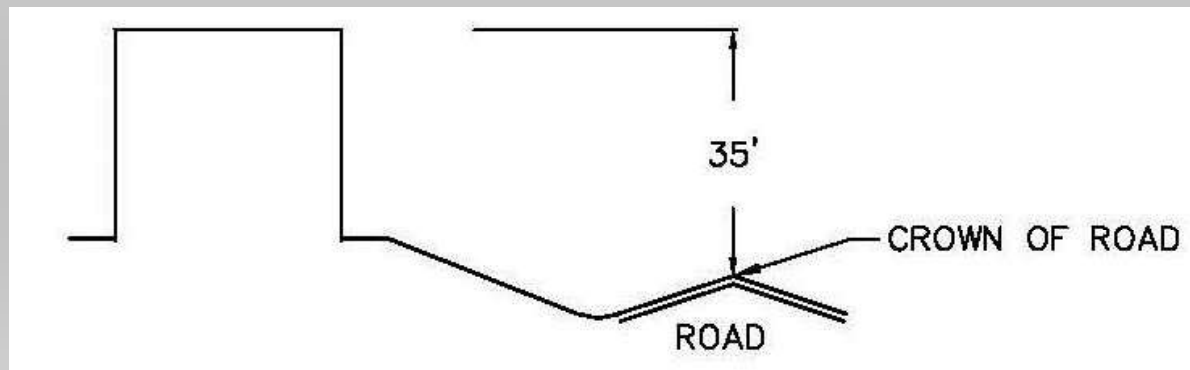
FEMA Flood Hazard Areas – Zone X Map



Legend

- Town Boundary
- Parcels
- Flood Zone X

Zone X: Measurement of Height



$35' = 33' \text{ height limit} + 24'' \text{ above crown of road}$

FEMA Flood Hazard Areas – Zone AE Summary

- Zone AE is a flood hazard area. These areas are subject to inundation by the 1-percent-annual-chance (100-year) flood.
- NFIP Flood Insurance is required.
- Base flood elevation established by FEMA. Finished floor elevation of buildings must be at least at base flood elevation. The Town has two AE zones, AE-6 (required 6' elevation) and AE-7 (required 7' elevation).
- Therefore, the finished floor elevation of buildings in Town must meet higher of FEMA's base flood elevation or Town Code requirements (at least 24 [18 in Charter] inches above crown of road elevation).

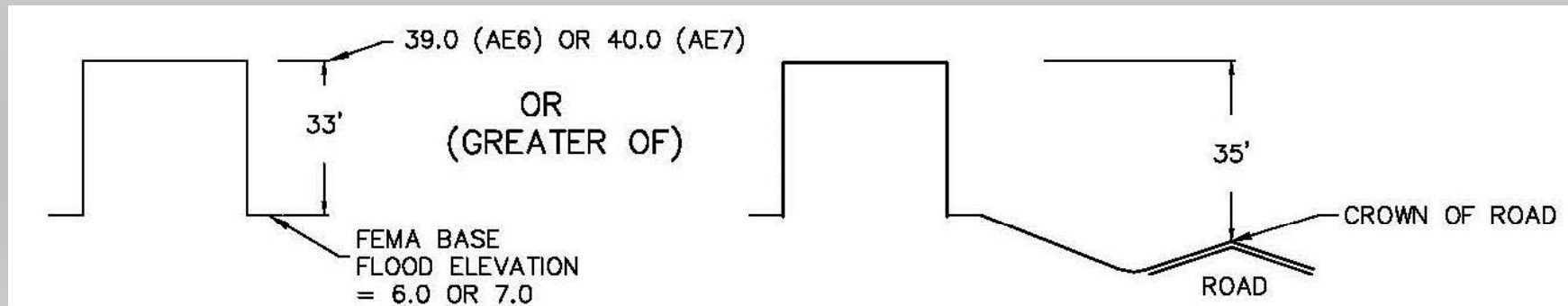
FEMA Flood Hazard Areas – Zone AE Map



Legend

-  Town Boundary
 Parcels
 Flood Zone AE (Elev 6)
 Flood Zone AE (Elev 7)

Zone AE: Measurement of Height



39' = 33' height limit + AE-6 required elevation

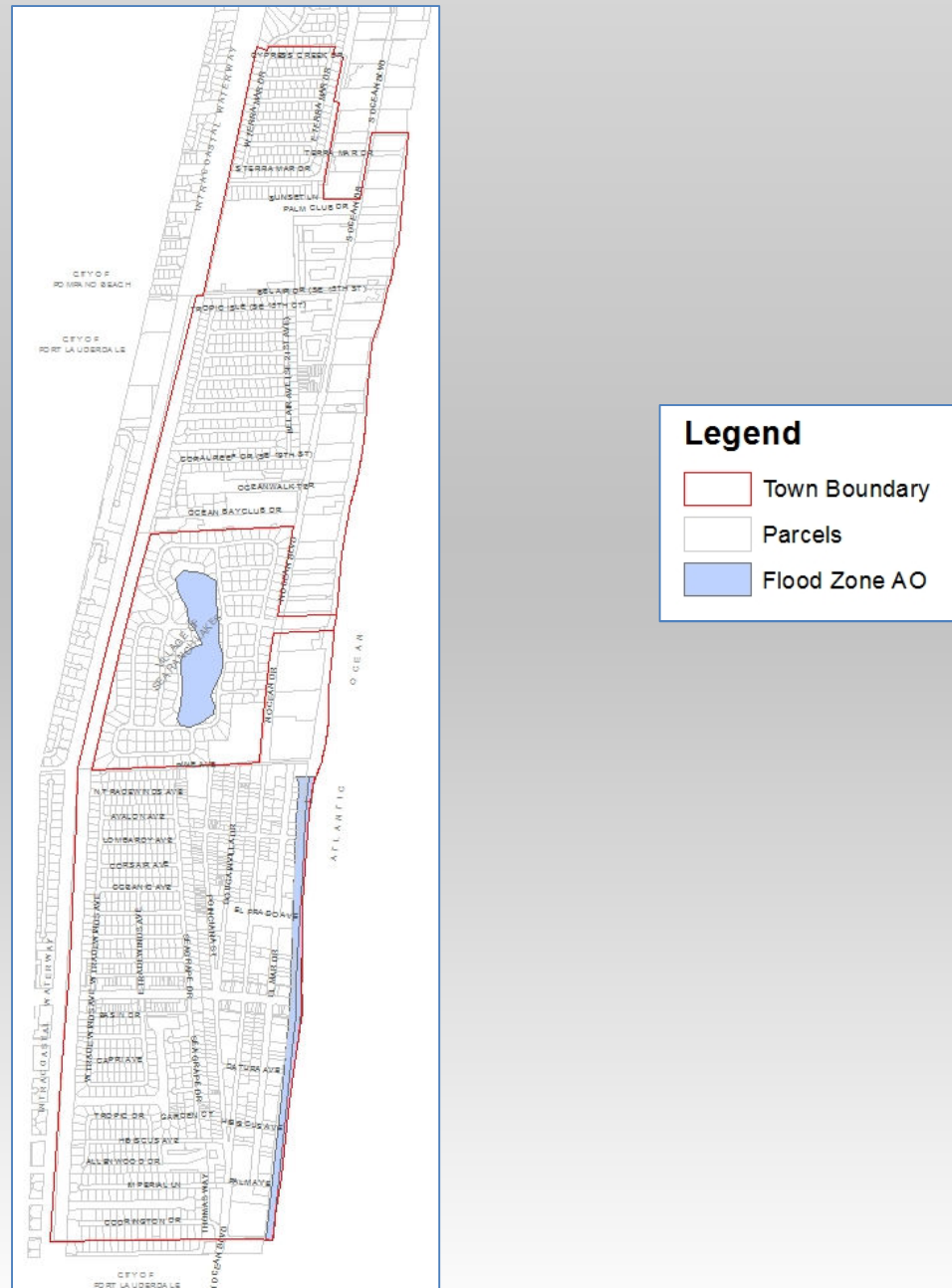
40' = 33' + AE-7 required elevation

35' = 33' height limit + 24" above crown of road

FEMA Flood Hazard Areas – Zone AO Summary

- Zone AO is a flood hazard area.
- NFIP Flood Insurance required.
- Average flood depths established by FEMA. Base flood elevation determined by average flood depth above elevation of site.
- Therefore, the finished floor elevation of buildings in Town must meet greater of FEMA base flood elevation or Town Code requirements (at least 24 [18 in Charter] inches above crown of road elevation).

FEMA Flood Hazard Areas – Zone AO Map



FEMA Flood Hazard Areas – Zone AO Map



Legend

Town Boundary

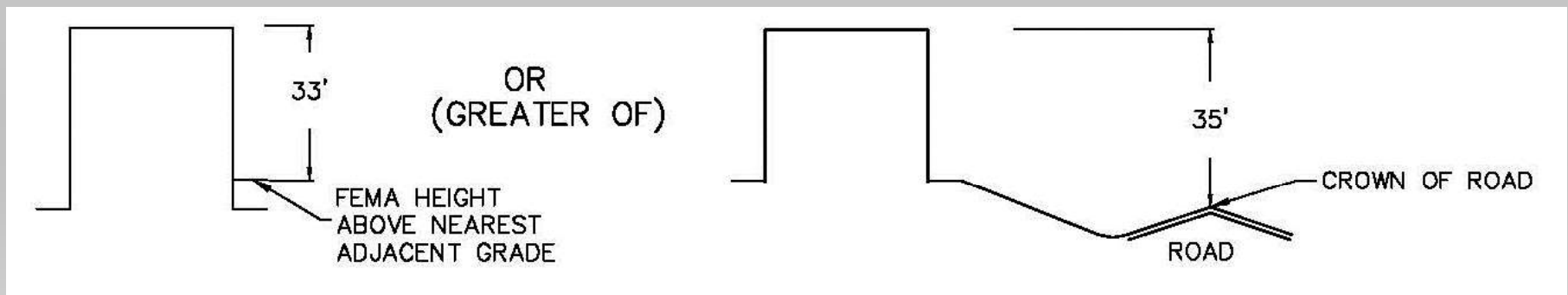
Parcels

FZONE, DEPTH

AO, 2

AO, 3

Zone AO: Measurement of Height



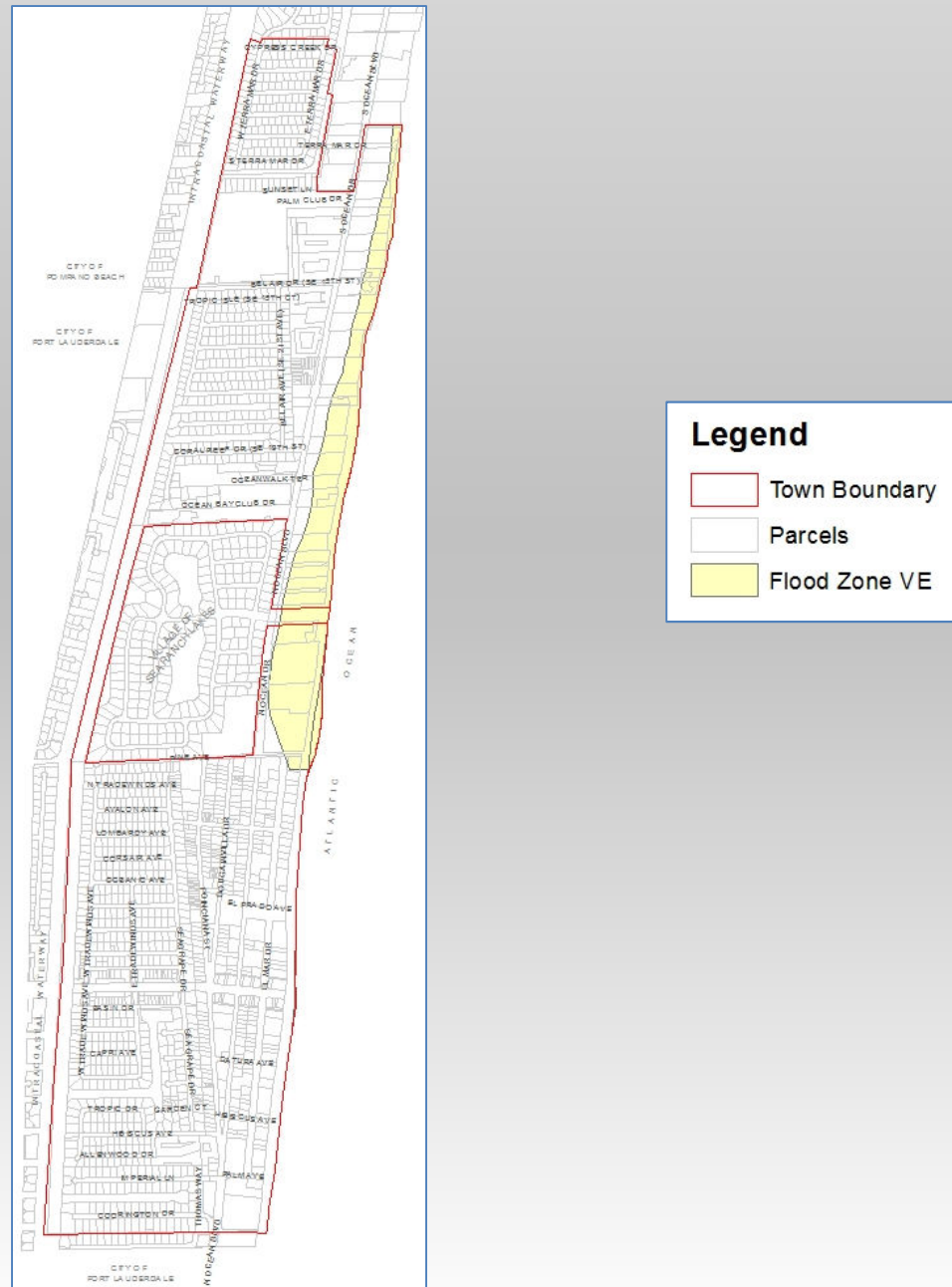
$X = 33' \text{ height limit} + Y$
(X = Permissible Building Height)
(Y = Required Additional Elevation Above
Adjacent Grade (2' or 3'))

$35' = 33' \text{ height limit} + 24'' \text{ above}$
crown of road

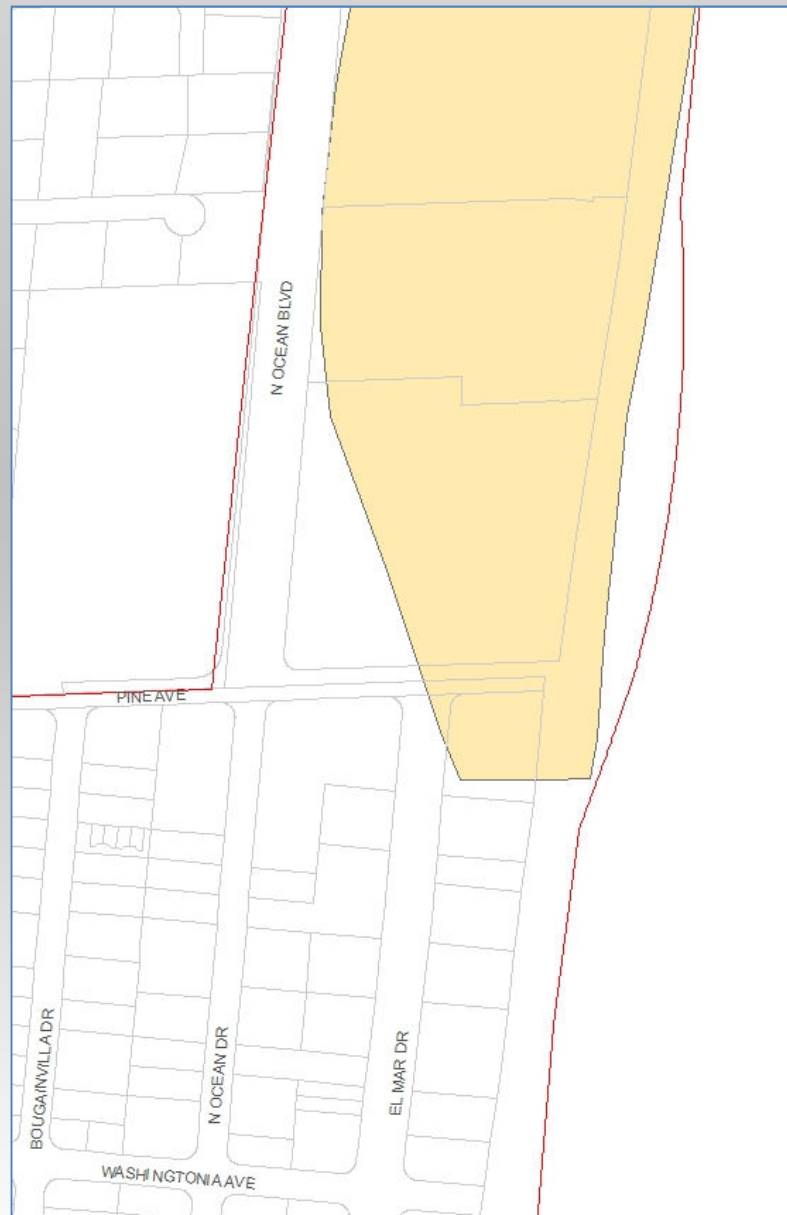
FEMA Flood Hazard Areas – Zone VE Summary

- Zone VE is a flood hazard area.
- NFIP Flood Insurance required
- Base flood elevation established by FEMA
- Minimum finished floor elevation must meet greater of FEMA base flood elevation or Town Code requirements (at least 24 [18 in Charter] inches above crown of road elevation)

FEMA Flood Hazard – Zone VE Map



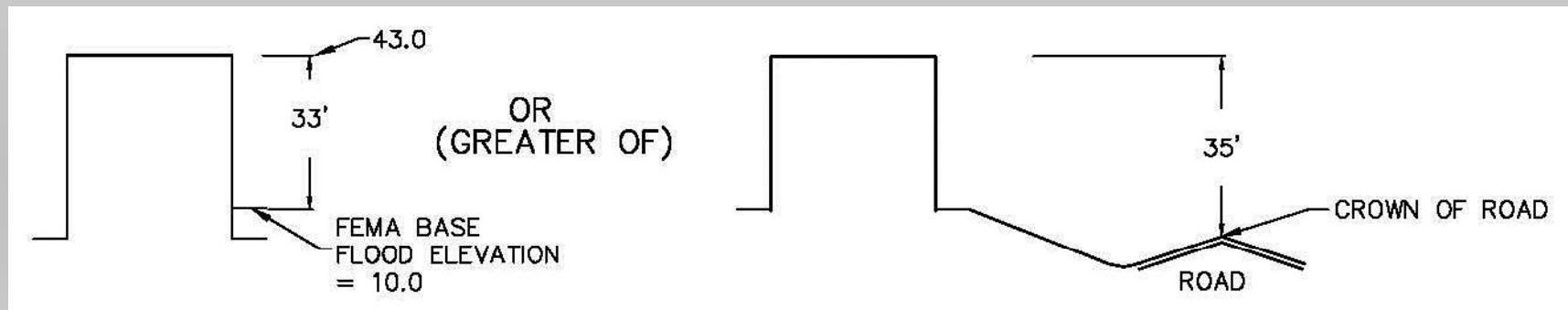
FEMA Flood Hazard – Zone VE Map



Legend

-  Town Boundary
-  Parcels
-  Flood Zone VE

Zone VE: Measurement of Height



$43' = 33' \text{ height limit} + \text{FEMA Base Flood Elevation in VE 10} = 10'$

$35' = 33' \text{ height limit} + 24'' \text{ above crown of road}$

Questions

TOWN OF LAUDERDALE BY THE SEA

Single Family Duplex Area where Height is Limited to 33' by Charter

Legend

- Town Boundary
- Zoning District Line

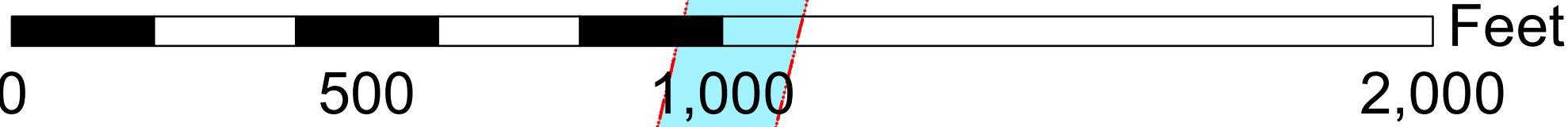
Town Zoning District

- RS-5 Residence, Single - Family Dwelling (5 Dwelling Units)
- RD-10 Residence, Two- Family Dwelling (Duplex) (10 Dwelling Units)
- RM-25 Residence, Apartments, Hotels, etc (Multiple Dwellings) (25 Dwelling Units)
- RM-50 Hotel, Motel, Apartment Hotel, Apartments (Hight - Rise) (50 Dwelling Units)
- B-1A Business, Retail Business
- B-1 Business, Retail Business

Broward County Zoning Districts

- RS-4 Residence, Single - Family Dwelling (4 Dwelling Units)
- RS-5 Residence, Single - Family Dwelling (5 Dwelling Units)
- RM-15 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (15 Dwelling Units)
- RM-16 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (16 Dwelling Units)
- RM-25 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (25 Dwelling Units)
- R-5 Motel District
- PUD Planned Unit Development District
- Water Unzoned Area
- Single Family Duplex Area where Height is Limited to 33' by Charter

Draft document created for review by
Charter Review Board November 14, 2012



TOWN OF LAUDERDALE BY THE SEA

Single Family Duplex Area
where Height is Limited to 33' by Charter

Legend

- Town Boundary
- Zoning District Line

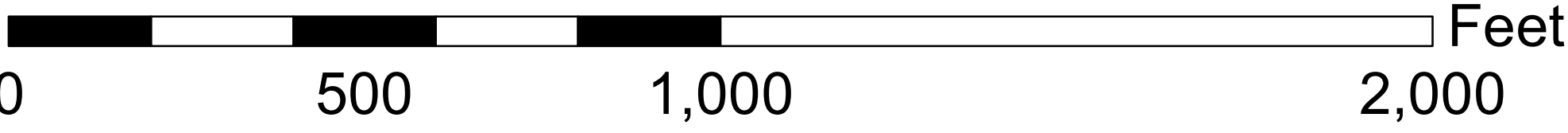
Town Zoning District

- RS-5 Residence, Single - Family Dwelling (5 Dwelling Units)
- RD-10 Residence, Two- Family Dwelling (Duplex) (10 Dwelling Units)
- RM-25 Residence, Apartments, Hotels, etc (Multiple Dwellings) (25 Dwelling Units)
- RM-50 Hotel, Motel, Apartment Hotel, Apartments (High - Rise) (50 Dwelling Units)
- B-1A Business, Retail Business
- B-1 Business, Retail Business

Broward County Zoning Districts

- RS-4 Residence, Single - Family Dwelling (4 Dwelling Units)
- RS-5 Residence, Single - Family Dwelling (5 Dwelling Units)
- RM-15 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (15 Dwelling Units)
- RM-16 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (16 Dwelling Units)
- RM-25 Residence, Apartments, Hotels, etc. (Multiple Dwelling) (25 Dwelling Units)
- R-5 Motel District
- PUD Planned Unit Development District
- Water Unzoned Area
- Single Family Duplex Area where Height is Limited to 33' by Charter

Draft document created for review by
Charter Review Board November 14, 2012



**DISCUSSION DRAFT OF CHARTER REVIEW BOARD'S
POTENTIAL CHANGES TO TOWN CHARTER ARTICLE VII:
Plain English Version Base Document
Board's Proposed Changes In Strike Through And Underline Text**

Article VII. PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) Limit on height and number of stories of buildings.

(a) *Definition.* For purposes of this section, the following definitions shall apply.

(i) "Roofline" is ~~defined as follows:~~

(A) the highest point on a flat roof, or

(B) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.

(ii) "Grade" means as the highest of the following three alternatives:

(A) grade as defined in the Florida Building Code, or

(B) the level of the crown of the adjacent road plus eighteen inches, or

(C) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.

(iii) "Height" shall be measured from grade to the roofline.

(iv) "Business and multifamily areas" shall mean those areas not defined as single-family and duplex areas.

(v) "Single-family and duplex areas" shall mean the following:

(A) South of Pine Avenue:

(I) the area bounded by the Intracoastal Waterway on the west, the properties fronting Seagrape Drive on the east, and Harbor Drive on the south, excluding Blocks M and H and Lots 1 and 2 of Block 14 of the Silver Shores Section of Lauderdale-By-The-Sea Unit B, and

(II) the area bounded by the Intracoastal Waterway on the west, the southern boundary of the Town on the south, Basin Drive on the north, and bounded by the following streets or properties on the east, listed from north to south: Block G of Silver Shores Subdivision; Silver Shores Waterway; Silver Shores Unit A Block 6, Lot 8; Tropic Drive; and Thomas Way, including all lots fronting on Imperial Lane.

(B) North of Pine Avenue: the areas included in the following

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- (I) Terra Mar Island Estates, including the First and Second Additions, and
- (II) Lots 1-16 on Sunset Lane, and
- (III) Palm Club, and
- (IV) Bel-Air and Bel-Air Isle.

(b) *Limits applicable to business and multi-family areas.* ~~buildings constructed on or prior to March 20, 2006.~~ All buildings in business and multi-family areas shall have no more than four stories and shall not exceed 44 feet. ~~The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), "grade" is defined as the higher of the following two alternatives:~~

- ~~(i) grade as defined in the Florida Building Code, or~~
- ~~(ii) the level of the crown of the adjacent road plus eighteen inches.~~

(c) *Limits applicable to single family and duplex areas.* ~~buildings constructed after March 20, 2006.~~ All buildings in single family and duplex areas shall not exceed 33 feet in height. ~~The height shall be measured from the highest of the following locations to the roofline:~~

- ~~(i) grade as defined in the Florida Building Code, or~~
- ~~(ii) the level of the crown of the adjacent road plus eighteen inches, or~~
- ~~(iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.~~

(d) *Measurement of height of roof structures.* The following are excluded from the measurements of height under subsections (b) and (c):

- (i) bulkheads and penthouses used solely to enclose stairways,
- (ii) tanks,
- (iii) elevator machinery or shafts, and
- (iv) ventilation or air conditioning apparatus, and
- (v) solar panels.

All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.

(e) *Preservation of more restrictive Code provisions.* The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.

~~(f) *Prohibition on Town Commission granting variances or amending by ordinance.* The Town Commission may not increase, by ordinance or by variance, the height limits established herein.~~

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(2) *Limits on use of stories and parking for buildings over three stories or 33 feet in height.* Buildings over three stories or 33 feet in height are subject to the following limitations.

(a) Definitions. For purposes of this section, the following definitions shall apply.

(i) "At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.

(ii) "Non-habitable" means not being used as a home or place of abode.

(b) ~~(a)~~ Level of first story. The first story shall be at grade. ~~"At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.~~

(c) ~~(b)~~ Use in residential zoning districts. At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for uses that are non-habitable. ~~one or more of the following uses:~~

- ~~1. parking, either with or without toll collection booths;~~
- ~~2. storage;~~
- ~~3. refuse;~~
- ~~4. security;~~
- ~~5. registration;~~
- ~~6. maintenance;~~
- ~~7. access, either with or without a lobby.~~

~~(e) Use in business zoning districts.~~ The first story may be used for any of the uses listed in (b). ~~It may also be used for commercial uses if the Code required off-street parking is provided on or adjacent to the property.~~

(d) Underground stories. Underground stories are allowed, but their uses are limited to nonhabitable uses. ~~in accordance with the applicable zoning district, as detailed above in (b) and (c).~~

~~(e) Off-site parking.~~ ~~If the Code required parking is not provided on the property, the building must have dedicated off-street parking adjacent to the property.~~

~~(f) Back-out parking.~~ ~~All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.~~

~~(g) Prohibition on Town Commission granting variances or amending by ordinance.~~ ~~The Town Commission may not increase, by ordinance or by variance, the use and parking requirements established herein.~~

(3) *Nonconforming buildings.*

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(a) *Definition.* For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:

- (i) exceed the applicable height limit established in (1) or
- (ii) fail to comply with the use requirements of (2).

(b) *Limitation on replacement of nonconforming buildings.*

(i) *Definitions.*

(A) "Habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(B) "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(C) "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.

(ii) *Eligibility.* Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:

(A) *Destruction.* The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

(B) *Redevelopment.* The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(iii) *Procedure.* The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).

(iv) *Use and parking.* The replacement building must comply, where applicable, with the restrictions on use ~~and parking~~ of subsection (2).

(v) *Extensions of time.* The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.

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(vi) *Height.* The maximum allowable height of any replacement building shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. ~~The Town Commission may not increase, by ordinance or by variance, the height limits established herein.~~

(vii) *Square footage.* The maximum allowable square footage of any replacement building shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. ~~The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.~~

(viii) *Setbacks.* The setbacks of any replacement building shall not exceed the original setbacks of the non-conforming building which it replaces.

~~(viii)~~ (ix) *Reductions in size.* A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.

(4) *Resident standing to enforce.* Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:

- (a) create a cause of action at law for money damages, or
- (b) authorize a court of equity to award money damages as an incident to equitable relief, or
- (c) authorize an award of attorney's fees to the prevailing party or to any other party.

~~(5) *Limit on Town Commission power to amend land development regulations*~~

~~(a) *Definition.* "Residential zoning districts" shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.~~

~~(b) *Referendum required.* A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:~~

~~(i) *Residential zoning district height limits.* The maximum height limits established for residential zoning districts may be increased only by a referendum.~~

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- ~~(ii) *Rezoning of districts to another use.* A property in a residential zoning district may be rezoned to a different zoning district only by a referendum.~~
- ~~(iii) *Creation of new categories of zoning.* New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.~~
- ~~(iv) *Addition of uses to a zoning category.* New uses may be added to existing residential zoning districts only by a referendum.~~

(6) *Limitation on amendments to this section of the Charter by the voters.* This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.

(7) *Preservation of stricter Code provisions.* Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

Analysis of Town of Lauderdale-By-The-Sea Charter for Charter Review Board

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet</p> <p>(a) Above grade, as defined in the Florida Building Code, or</p> <p>(b) Above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, or</p> <p>(c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,</p> <p>Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.</p>	<p>A grammatically correct reading of the first sentence of (1) would construe the date to apply to the Town boundaries and not to a building, because the clause incorporating the date uses the plural form as does the reference to boundaries. However, such an interpretation would not be meaningful. The Town boundaries have not changed since 2006; they are the current Town limits. Moreover, no annexation areas are adjacent to the Town, so it is not readily apparent how such a distinction could ever matter, unless the Town were somehow to merge with an adjacent municipality and still remain a Town. Also, such an interpretation essentially nullifies the second part of (1) referring to “all other buildings,” because there are no buildings within the control of the Town’s charter which are not in the Town boundaries. This violates a principle of statutory construction: that the interpretation should give effect to every part of the language if possible.</p> <p>Therefore, it appears that this section could be construed so that the first part applies to buildings in existence on March 20, 2006, and the second part applies to buildings that are constructed after that date. This interpretation is reflected in the Plain English</p>	<p>(1) <i>Limit on height and number of stories of buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, “roofline” is defined as follows:</p> <p>(i) the highest point on a flat roof, or</p> <p>(ii) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.</p> <p>(b) <i>Limits applicable to buildings constructed on or prior to March 20, 2006.</i> All buildings shall have no more than four stories and shall not exceed 44 feet. The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), “grade” is defined as the higher of the following two alternatives:</p> <p>(i) grade as defined in the Florida Building Code, or</p> <p>(ii) the level of the crown of the adjacent road plus eighteen inches.</p> <p>(c) <i>Limits applicable to buildings constructed after March 20, 2006.</i> All buildings shall not exceed 33 feet in height. The height shall be measured from the highest of the following locations to the roofline:</p> <p>(i) grade as defined in the Florida Building Code, or</p> <p>(ii) the level of the crown of the adjacent road plus eighteen inches, or</p> <p>(iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.</p> <p>* * * *</p> <p>(8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter</p> <p>(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5),</p> <p>...</p>	<p>version of this section.</p> <p>The heights in (1) are addressed further in (8)-(9). For clarity, those provisions have been added to (1), so all related matters are in the same subsection.</p> <p>Redevelopment of certain legal nonconforming structures is addressed in greater detail in subsection (3). The height limit of three stories or 33 feet was first created by the voters in 1973 and the majority of the more detailed height, use and parking restrictions were created in 1998. Further limits were added in 2006. Therefore, an individualized analysis of a particular structure would be necessary in order to determine whether it or its use are legally non-conforming, based on the date of construction, the nature of the nonconformity and whether or not it is located in the annexation area.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (f) of the Plain English version could be omitted.</p>	<p>(d) <i>Measurement of height of roof structures.</i> The following are excluded from the measurements of height under subsections (b) and (c):</p> <ul style="list-style-type: none">(i) bulkheads and penthouses used solely to enclose stairways,(ii) tanks,(iii) elevator machinery or shafts, and(iv) ventilation or air conditioning apparatus. <p>All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.</p> <p>(e) <i>Preservation of more restrictive Code provisions.</i> The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.</p> <p>(f) <i>Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (½) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situated, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.</p>	<p>This section refers to "any building." Below in this section it talks about "proposed buildings." A later section addresses existing nonconforming buildings that are redeveloped. The scope is unclear. For the Plain English version, the interpretation that this section applies to "any building" is utilized.</p> <p>This section contains details that are usually found in a Code.</p> <p>This section could be greatly simplified by stating that uses of first stories are limited to whatever non-habitable uses are allowed by the zoning district. But that clarification would broaden the scope of the listed uses for residential zoning districts.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so (g) of the Plain English version could be omitted.</p>	<p>(2) <i>Limits on use of stories and parking for buildings over three stories or 33 feet in height.</i> Buildings over three stories or 33 feet in height are subject to the following limitations.</p> <p>(a) <i>Level of first story.</i> The first story shall be at grade. "At grade" means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.</p> <p>(b) <i>Use in residential zoning districts.</i> At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for one or more of the following uses:</p> <ol style="list-style-type: none">1. parking, either with or without toll collection booths,2. storage,3. refuse,4. security,5. registration,6. maintenance,7. access, either with or without a lobby. <p>(c) <i>Use in business zoning districts.</i> The first story may be used for any of the uses listed in (b). It may also be used for commercial uses if the Code-required off-street parking is provided on or adjacent to the property.</p> <p>(d) <i>Underground stories.</i> Underground stories are allowed, but their uses are limited in accordance with the applicable zoning district, as detailed above in (b) and (c).</p> <p>(e) <i>Off-site parking.</i> If the Code required parking is not provided on the property, the building must have dedicated off-street parking adjacent to the property.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter,</p>		<p>(f) <i>Back-out parking.</i> All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.</p> <p>(g) <i>Prohibition on Town Commission granting variances or amending by ordinance.</i> The Town Commission may not increase, by ordinance or by variance, the use and parking requirements established herein.</p>
<p>(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.</p>	<p>This has been combined into (2) in the plain English version.</p> <p>As noted in (1) above, (1)(c) is part of a section that may be interpreted to apply to buildings constructed after March 20, 2006. (2) applies to any building, without a date restriction. So what buildings are not “any building” that can be affected by this sentence?</p> <p>The reference to “units” suggests that this provision is intended to apply to residential buildings, but it nowhere states this explicitly. It has been added as (2)(e) and (f) and applies to both residential and non-residential uses.</p>	<p>See (2)(e) above.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.</p>	<p>(4) is just a definition, and the related regulations are in the following sections. All of the related provisions of (4) and (5) have been combined into (3) of the Plain English version.</p>	<p>(3) <i>Nonconforming buildings.</i></p> <p>(a) <i>Definition.</i> For purposes of this section, nonconforming buildings means all buildings within the Town that were legally in existence on March 20, 2006, and that either:</p> <ul style="list-style-type: none"> (i) exceed the applicable height limit established in (1) or (ii) fail to comply with the use requirements of (2).
<p>(5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:</p> <p>(a) The existing non-conforming building has:</p> <ul style="list-style-type: none"> (i) Been destroyed by fire, natural disaster, or other act of God; and (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or <p>(b) The existing non-conforming building is:</p> <ul style="list-style-type: none"> (i) Demolished as part of a Town approved redevelopment of the property; and (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval. 	<p>The explicit statements about being able to build less than the maximum are not necessary because the charter provides for a maximum allowable amount, not a maximum required amount.</p> <p>The section (9) limitations on the Town Commission's powers to change these provisions are already applicable as a matter of law. Only a vote of the people can change the charter, so those parts of (vi) and (vii) of the Plain English version could be omitted.</p> <p>The phrase "Town approved redevelopment of the property" is not defined. Standing alone, subsection (i) could indicate that basic site plan approval for redeveloping an existing non-conforming building is all that is required. However, subsection (ii) specifically addresses site plan approval. This may mean that (a) the redevelopment approval referenced in subsection (i) is in addition to site plan; or, (b) based on the phrasing, subsection (ii) may simply be intended to establish the required timing of site plan approval in order to qualify</p>	<p>(b) <i>Limitation on replacement of nonconforming buildings.</i></p> <p>(i) <i>Definitions.</i></p> <p>A. "Habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>B. "Habitable square feet" means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>C. "Replacement building" means a new building that is allowed to be constructed without full compliance with this section, as provided herein.</p> <p>(ii) <i>Eligibility.</i> Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:</p> <p>A. <i>Destruction.</i> The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or</p> <p>B. <i>Redevelopment.</i> The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the</p>

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<p>(c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.</p>	<p>for redevelopment under this section - prior to demolition of the existing non-conforming building. The second interpretation is applied in the "Plain English" version; the reference to Town approved redevelopment of the property is construed as an application, prior to demolition of the existing structure, for a site plan to redevelop the property, and not to a different form of approval.</p>	<p>replacement building is commenced within six (6) months of the date of site plan approval.</p>
<p>(d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on use established in paragraph (2), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.</p>	<p>Under either interpretation, if site plan approval is obtained after demolition, the site would be treated as a vacant lot required to conform to all the requirements of the code and charter.</p>	<p>(iii) <i>Procedure.</i> The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).</p> <p>(iv) <i>Use and parking.</i> The replacement building must comply, where applicable, with the restrictions on use and parking of subsection (2).</p>
<p>(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original</p>		<p>(v) <i>Extensions of time.</i> The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.</p> <p>(vi) <i>Height.</i> The maximum allowable height of any replacement building shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the height limits established herein.</p> <p>(vii) <i>Square footage.</i> The maximum allowable square footage of any replacement building shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p> <p>(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.</p>		<p>building. The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.</p> <p>(viii) <i>Reductions in size.</i> A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.</p>
<p>(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.</p>	<p>Again, a distinction is drawn based on the Town boundaries, which have not changed. Therefore, the language applies to the entire Town ("all real property"). This section seems to support the alternative interpretation of (1), that the date applies to the boundaries and not to the buildings. However, if that interpretation</p>	

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	<p>applies, the 33 foot provisions are nullified.</p> <p>Because the language does not add anything to the previous sections, it is not carried over into the Plain English version.</p>	
<p>(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.</p>	<p>Paragraph (2) contains several use and parking restrictions, yet this language only refers to the height and square footage limits.</p>	<p>(4) <i>Resident standing to enforce.</i> Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:</p> <p>(a) create a cause of action at law for money damages, or</p> <p>(b) authorize a court of equity to award money damages as an incident to equitable relief, or</p> <p>(c) authorize an award of attorney's fees to the prevailing party or to any other party.</p>
<p>(8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter.</p>	<p>Because this relates to (1), it has been moved to (1).</p>	

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<p>(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.</p>	<p>The limitations on the Town Commission's power to change provisions of this charter have been placed where each of those limitations are established in the Plain English version for clarity. However, as noted above, they are not necessary because as a matter of law the Town Commission does not have this power.</p> <p>The limitations on the Town Commission's ability to change the land development regulations are quite different. The Commission does have this power, and these provisions limit that power. They are placed in section (5) of the Plain English version.</p> <p>“Rezoned for any other use whatsoever” can be interpreted in different ways. It modifies the word districts, not properties. The phrase could refer to a complete rezoning of an entire zoning district, or to a rezoning of a property or multiple properties located in one district to another district. For example, this could mean that the RM-25 district as a whole could not be changed to the B-1 district without a referendum. Or it could mean that a particular property that is shown on the zoning map as RM-25 could not be rezoned to B-1 without a referendum. For purposes of this analysis, the plain English version applies the interpretation that it restricts the rezoning of individual properties to another zoning district.</p> <p>“Rezoned for any other use whatsoever” may also be interpreted to mean any change to the</p>	<p>(5) <i>Limit on Town Commission power to amend land development regulations.</i></p> <p>(a) <i>Definition.</i> “Residential zoning districts” shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.</p> <p>(b) <i>Referendum required.</i> A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town's land development regulations:</p> <p>(i) <i>Residential zoning district height limits.</i> The maximum height limits established for residential zoning districts may be increased only by a referendum.</p> <p>(ii) <i>Rezoning of districts to another use.</i> A property in a residential zoning district may be rezoned to a different zoning district only by a referendum.</p> <p>(iii) <i>Creation of new categories of zoning.</i> New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.</p> <p>(iv) <i>Addition of uses to a zoning category.</i> New uses may be added to existing residential zoning districts only by a referendum.</p>

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	<p>text of the regulations for a zoning district which adds a use not currently listed or removes a listed use, because either type of change would result in a different set of uses being available in that zoning district. However, the language is expansive rather than restrictive -- “any other” (as in additional) use.” Therefore, the Plain English version applies the interpretation that the charter restricts the addition of uses to, but does not restrict the removal of uses from, a residential zoning district.</p> <p>“New categories of zoning” is also open to interpretation. It is not limited to the residential zoning districts, as the other phrases are. There are two kinds of zoning districts: overlay and regular. A property can only have one regular zoning district; they are mutually exclusive. Overlay districts, in contrast, are designed to preserve the regular underlying zoning district but modify certain aspects of it for certain properties in ways that are not suitable to the entire zoning district. For purposes of this analysis, the Plain English version applies the interpretation that a new category is a regular zoning district and not an overlay district.</p>	

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<p>(10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.</p>	<p>The first three statements are true as a matter of law and need not be included.</p> <p>The limitations on how this section may be amended by the voters are meaningful, and are incorporated in the Plain English version.</p>	<p>(6) <i>Limitation on amendments to this section of the Charter by the voters.</i> This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.</p>

Current Text	Comments re Bolded Language in Current Text	Plain English version
<p>(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>	<p>This language is an effective date clause from the charter amendment in which these changes were adopted. It no longer has applicability because the current charter already became effective.</p> <p>The final sentence is still meaningful because it addresses conflicting provisions of the Town Code.</p>	<p>(7) <i>Preservation of stricter Code provisions.</i> Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.</p>

PLAIN ENGLISH VERSION OF TOWN CHARTER
ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) Limit on height and number of stories of buildings.

(a) *Definition.* For purposes of this section, “roofline” is defined as follows:

- (i) the highest point on a flat roof, or
- (ii) the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof.

(b) *Limits applicable to buildings constructed on or prior to March 20, 2006.* All buildings shall have no more than four stories and shall not exceed 44 feet. The number of stories and the height shall be measured from grade to the roofline. As used in this subsection (1)(b), “grade” is defined as the higher of the following two alternatives:

- (i) grade as defined in the Florida Building Code, or
- (ii) the level of the crown of the adjacent road plus eighteen inches.

(c) *Limits applicable to buildings constructed after March 20, 2006.* All buildings shall not exceed 33 feet in height. The height shall be measured from the highest of the following locations to the roofline:

- (i) grade as defined in the Florida Building Code, or
- (ii) the level of the crown of the adjacent road plus eighteen inches, or
- (iii) the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations.

(d) *Measurement of height of roof structures.* The following are excluded from the measurements of height under subsections (b) and (c):

- (i) bulkheads and penthouses used solely to enclose stairways,
- (ii) tanks,
- (iii) elevator machinery or shafts, and
- (iv) ventilation or air conditioning apparatus.

All other roof structures, including parapet walls, are permitted to exceed the applicable height limit by up to four feet.

(e) *Preservation of more restrictive Code provisions.* The height limits established herein supersede any existing zoning ordinance or land development regulation to the extent that it establishes any greater maximum building height limit. This section shall not be construed to affect any existing zoning ordinance or land development regulation that establishes any lower maximum building height limit.

(f) *Prohibition on Town Commission granting variances or amending by ordinance.* The Town Commission may not increase, by ordinance or by variance, the height limits established herein.

(2) *Limits on use of stories and parking for buildings over three stories or 33 feet in height.*

Buildings over three stories or 33 feet in height are subject to the following limitations.

(a) *Level of first story.* The first story shall be at grade. “At grade” means that the floor is at or below grade and the ceiling is above grade, or that the floor and ceiling are both above grade.

(b) *Use in residential zoning districts.* At least one half of the square footage of the first story must be used for parking. The remainder of the first story may only be used for one or more of the following uses:

1. parking, either with or without toll collection booths,
2. storage,
3. refuse,
4. security,
5. registration,
6. maintenance,
7. access, either with or without a lobby.

(c) *Use in business zoning districts.* The first story may be used for any of the uses listed in (b). It may also be used for commercial uses if the Code-required off-street parking is provided on or adjacent to the property.

(d) *Underground stories.* Underground stories are allowed, but their uses are limited in accordance with the applicable zoning district, as detailed above in (b) and (c).

(e) *Off-site parking.* If the Code required parking is not provided on the property, the building must have dedicated off-street parking adjacent to the property.

(f) *Back-out parking.* All parking must be designed to allow parked vehicles to leave the parking space without having to back out into traffic.

(g) *Prohibition on Town Commission granting variances or amending by ordinance.* The Town Commission may not increase, by ordinance or by variance, the use and parking requirements established herein.

(3) *Nonconforming buildings.*

(a) *Definition.* For purposes of this section, “nonconforming buildings” means all buildings within the Town that were legally in existence on March 20, 2006, and that either:

- (i) exceed the applicable height limit established in (1) or
- (ii) fail to comply with the use requirements of (2).

(b) *Limitation on replacement of nonconforming buildings.*

(i) *Definitions.*

A. “Habitable story” means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

B. “Habitable square feet” means any square footage that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

C. “Replacement building” means a new building that is allowed to be constructed without full compliance with this section, as provided herein.

(ii) *Eligibility.* Nonconforming buildings generally must come into compliance with this section if replaced. However, a nonconforming building may be replaced with a replacement building if either:

A. *Destruction.* The existing non-conforming building has been destroyed by fire, natural disaster, or other act of God, and construction of the replacement building is commenced within twelve (12) months of the date of destruction; or

B. *Redevelopment.* The existing non-conforming building is demolished as part of a Town approved redevelopment of the property; and construction of the replacement building is commenced within six (6) months of the date of site plan approval.

(iii) *Procedure.* The property owner must apply for and receive Town approval of a site plan depicting the replacement building (prior to planned demolition, if any).

(iv) *Use and parking.* The replacement building must comply, where applicable, with the restrictions on use and parking of subsection (2).

(v) *Extensions of time.* The applicant may seek one (1) or more six (6) month extensions to the time periods for commencement of construction of a replacement building from the Town Commission by submitting a written application to the Town Clerk prior to the expiration of the original (or extended) timeframe.

(vi) *Height.* The maximum allowable height of any replacement building shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the height limits established herein.

(vii) *Square footage.* The maximum allowable square footage of any replacement building shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2)) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. The Town Commission may not increase, by ordinance or by variance, the square footage limits established herein.

(viii) *Reductions in size.* A replacement building may be shorter or have fewer square feet than the original nonconforming building without coming fully into compliance with this section.

(4) ***Resident standing to enforce.*** Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in this section of the Charter by bringing a lawsuit in equity seeking mandamus and prohibition. This section shall not be construed to:

(a) create a cause of action at law for money damages, or

(b) authorize a court of equity to award money damages as an incident to equitable relief, or

(c) authorize an award of attorney's fees to the prevailing party or to any other party.

(5) ***Limit on Town Commission power to amend land development regulations.***

(a) *Definition.* “Residential zoning districts” shall include but not be limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006.

(b) *Referendum required.* A referendum vote, in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances, is required to make the following changes to the Town’s land development regulations:

(i) *Residential zoning district height limits.* The maximum height limits established for residential zoning districts may be increased only by a referendum.

(ii) *Rezoning of districts to another use.* A property in a residential zoning district may be rezoned to a different zoning district only by a referendum.

(iii) *Creation of new categories of zoning.* New zoning districts, including all the regulations related to those districts, may be adopted only by a referendum.

(iv) *Addition of uses to a zoning category.* New uses may be added to existing residential zoning districts only by a referendum.

(6) ***Limitation on amendments to this section of the Charter by the voters.*** This section of the Charter may be amended or repealed only by a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or a March municipal general election. If a provision of this section of the Charter is finally adjudged by a court of competent jurisdiction, after all appeals have been exhausted, to violate the State or Federal Constitution or any valid state or federal law, then a special election may be held for the sole purpose of correcting, to the minimum practicable extent, such violation. Such special election may be held on a different day, or may be conducted by mail.

(7) ***Preservation of stricter Code provisions.*** Pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(1) No building within the jurisdictional boundaries of the Town, as they existed on March 20, 2006, shall have more than four (4) stories above grade, and the maximum height of buildings within the Town that have four (4) stories above grade shall be forty-four (44) feet above grade, as defined in the Florida Building Code, or above a horizontal plane eighteen inches above the crown of the roadway at the highest point adjoining the property on which the building is located, whichever of those two levels is higher. The maximum height for all other buildings within the Town shall be thirty-three (33) feet

- (a) Above grade, as defined in the Florida Building Code, or
- (b) Above a horizontal plane eighteen inches above the crown if the roadway at the highest point adjoining the property on which the building is located, or
- (c) Above the minimum elevation for a habitable, finished floor permitted under applicable federal or Florida state regulations,

Whichever of those three levels is highest. Height shall be measured from the applicable base level specified above to the highest point on a flat roof, or to the median elevation between the peak of a sloped roof and the lowest edge of the sloped roof. In accordance with the Florida Building Code, bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts or ventilation or air conditioning apparatus shall not be included in determining building height; all other roofs structures, including parapet walls, shall not exceed four feet in height above the maximum allowed building height.

(2) In any building within the Town that has more than three (3) stories above grade, the first story shall be at grade level and shall be used for parking, either with or without toll collection booths. The first story may also be used for storage, refuse, security, registration, maintenance, and/or access, either with or without a lobby, provided that at least one-half (1/2) of the square footage of the first story is used for parking. Only within districts of the Town zoned for business ("B") use, the first story of buildings having more than three (3) stories above grade may also be devoted to non-residential commercial uses, provided that dedicated parking required by Town ordinance or code for the proposed buildings is provided off-street at a location on or adjacent to the property on which the buildings are situate, and designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic. In any building within the Town that has more than three (3) stories above grade, the first story shall be restricted to the above enumerated uses, and may be used for no other purpose whatsoever. For the purposes of this provision of the Charter, a story is at grade level if its floor is at or below grade and its ceiling is above grade; a story that is at grade level is also above grade. Nothing in this paragraph shall be construed so as to prohibit any building within the Town that has more than three (3) stories above grade from also having one (1) or more subterranean stories below grade, provided, however, that in any building within the Town that has more than three (3) stories above grade, all subterranean stories shall be subject to the same restrictions on use as are established in this paragraph for the first story.

(3) Buildings which exceed thirty three (33) feet above grade, and which exceed thirty three (33) feet above the horizontal plane eighteen inches above the crown of the roadway at the

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Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

highest point adjoining the property on which the building is located, but which are nevertheless allowed under subparagraph (1)(c) of this Section, and which do not include a non-habitable first floor with ample parking as required by Town ordinance or code, in accordance with the number and type of units in those buildings, must have dedicated off-street parking at a location on or adjacent to the property on which the buildings are situate. Parking for buildings in this category must be designed so as to enable the parked vehicles to egress the parking space without having to back out into traffic.

(4) All existing buildings within the Town that were legally in compliance with existing height and use restrictions on March 20, 2006, or were grandfathered on that date, but that either exceed the maximum building height limit established in paragraph (1), above, of this section of the Charter, or that fail to comply, where applicable, with the restrictions on use established in paragraph (2), above, of this section of the Charter, (hereinafter referred to as "Non-conforming Buildings") shall be considered legal, but non-conforming.

(5) Notwithstanding the maximum building height limit established in paragraph (1), above, of this section of the Charter, an existing non-conforming building may be replaced by a new nonconforming building when, and only when:

- (a) The existing non-conforming building has:
 - (i) Been destroyed by fire, natural disaster, or other act of God; and
 - (ii) The property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within twelve (12) months of the date of destruction; or
- (b) The existing non-conforming building is:
 - (i) Demolished as part of a Town approved redevelopment of the property; and
 - (ii) Prior to demolition, the property owner has submitted and received Town approval of a site plan depicting the replacement building; and
 - (iii) Construction of the replacement building is commenced within six (6) months of the date of site plan approval.
- (c) The Town Commission may grant one (1) or more six (6) month extensions to the time periods for commencement of construction established in paragraphs (5)(a)(iii) and (5)(b)(iii), above, provided a written request for extension is filed with the Town Clerk prior to (in the case of a first request for extension) the expiration of the initial applicable time period for commencement of construction or prior to (in the case of a subsequent request for extension) the expiration of the most recent extension of the applicable time period for commencement of construction.
- (d) All new non-conforming buildings constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall comply, where applicable, with the restrictions on

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

use established in paragraph (2), above, and the provisions for parking availability established in paragraph (3), above, of this section of the Charter.

(e) The maximum allowable height of any new non-conforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original height of the non-conforming building which it replaces, plus any additional height which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the charter) may be necessary to obtain the same number of habitable stories as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new non-conforming building from being constructed to a lesser height or from containing fewer habitable stories than that of the original non-conforming building which it replaces. For the purposes of this provision of the Charter, the term "habitable story" means any story or part thereof that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(f) The maximum allowable square footage of any new nonconforming building constructed pursuant to the provisions of either paragraph (5)(a) or (5)(b), above, shall not exceed the original square footage of the non-conforming building which it replaces, plus any additional square footage which (because of the requirements of state or federal law, or because of the restrictions on use established in paragraph (2), above, of this section of the Charter) may be necessary to obtain the same number of habitable square feet as was contained in the original non-conforming building. Nothing in this section of the Charter shall be construed to prevent a new nonconforming building from being constructed either with less total square footage or with less habitable square footage than that of the original non-conforming building which it replaces. For the purposes of this section of the Charter, the term "habitable square footage" means the square footage of that portion of a building that is used as a home or place of abode, either permanent or temporary, by one (1) or more persons.

(6) The maximum building height limits, the restrictions on use and the maximum allowable square footage, and the provisions governing parking established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall be applicable to all real property located within the boundaries of the Town as the boundaries exist on March 20, 2006.

(7) Every resident of the Town shall have the standing to enforce the maximum building height limits and the maximum allowable square footage established in paragraphs (1), (2) and (5), above, of this section of the Charter, by means of a suit in equity seeking either mandamus; prohibition; or any combination thereof, but nothing in this provision of the Charter shall be construed to either create a cause of action at law for money damages, or to authorize a court of equity to award money damages as an incident to equitable relief, or to authorize an award of attorney's fees to the prevailing party or to any other party.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(8) The maximum building height limit established in paragraph (1), above, of this section of the Charter, supersedes any existing zoning ordinance or land development regulation to the extent that said zoning ordinance or land development regulation establishes anywhere within the Town a maximum building height limit greater than that established in paragraph (1), above, of this section of the Charter, but nothing in this section of the Charter shall be construed to supersede, modify or repeal any existing zoning ordinance or land development regulation that establishes anywhere within the Town a maximum building height limit lower than that established in paragraph (1), above, of this section of the Charter.

(9) The Town Commission may not increase, by ordinance or by variance, the maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, nor may the Town Commission modify, amend or repeal, by ordinance or by variance, the restrictions on use established in paragraph (2), above, or the provisions for parking availability established in paragraphs (2), (3) or (5), above, of this section of the Charter, nor may the Town Commission increase, by ordinance or by variance, the maximum allowable square footage established in paragraph (5), above, of this section of the Charter. The maximum height limits established for residential zoning districts including, but not limited to, R-5, RS-4, RS-5, RD-10, RM-15, RM-16, RM-25 and PUD in the Town's land development code as of March 20, 2006, may be increased, or such districts re-zoned for any other use whatsoever, only by a referendum vote of the registered voters of the Town in the manner established in Article IV, Section 4.7 of this Charter for the repeal or amendment of initiated ordinances. The Town may not create new categories of zoning without approval of such categories by a similar referendum vote; and all provisions of such new categories of zoning must be submitted to the voters for approval.

(10) The maximum building height limits established in paragraphs (1) and (5), above, of this section of the Charter, may be increased only by an amendment to or by repeal of this section of the Charter. The restrictions on use established in paragraph (2), above, and the provisions governing parking availability established in paragraphs (2), (3) and (5), above, of this section of the Charter, may be modified, amended or repealed only by an amendment to or by repeal of this section of the Charter. The maximum allowable square footage established in paragraph (5), above, of this provision of the Charter, may be increased only by an amendment to, or by repeal of this section of the Charter. Except as expressly provided below, this section of the Charter may be amended or repealed only by means of a majority vote of the registered voters of the Town at a referendum election held either on the same day as a regularly scheduled November general election or on the same day as a regularly scheduled March municipal general election. The amendment or repeal of this section of the Charter at a special election held on a day other than a regularly scheduled November general election or on a day other than a regularly scheduled March municipal general election is expressly prohibited, except that a special election or special election by mail may be held to correct, to the minimum practicable extent, a provision adjudged by a court of competent jurisdiction to violate the State or Federal Constitution or any valid state or federal law, but only after such adjudication is affirmed on appeal. Amendments approved at a special election may include no elements not directly related to such court adjudication.

ARTICLE VII. - PLANNING AND ZONING.

Sec. 7.1. - Maximum height for buildings established; referendum vote required for increases in zoned residential-district height limits.

(11) These provisions of the Charter shall be effective immediately upon adoption by a majority of the registered voters of the Town voting in a referendum to amend the Charter so as to include these provisions. Upon adoption, the maximum building height limits, the restrictions on use, the maximum allowable square footage and the provisions governing parking availability established in paragraphs (1), (2), (3) and (5), above, of this section of the Charter, shall immediately apply to all real property located within the boundaries of the entire Town. Upon adoption of these provisions, and pending amendment of any portion or portions of the Town's Code of Ordinances inconsistent with this section of the Charter, the more stringent provisions of this section shall apply.

Memo

To: Charter Review Board, Town of Lauderdale-By-The-Sea

From: Susan L. Trevarthen, Town Attorney

Cc: Connie Hoffmann, Town Manager

Date: March 15, 2013

Re: **Remaining Articles of Charter – Proposed Actions**

At the February meeting, the Board discussed the remaining articles of the Charter, and requested that a summary be provided of actions taken and any remaining issues for discussion. The Board proposed as follows according to my notes:

Article I. Transition from Abolished Town – No changes

Article II. Corporate Powers – No changes

Article III. Administration and Legislation – Note that the electoral residency language needs to be removed if the residential electoral district requirement is removed from Article VI. Elections. A footnote has been added to the relevant section of that Article, noting that if the Commission agrees to remove this requirement, the text of Section 3.3 will also need to change. See footnote 2 to Section 6.1(2).

Article IV. Initiative and Referendum – No changes

Article V. Town Officers and Employees – A few potential changes were noted for further discussion and additional information.

1. Must the requirement in Section 5.2(1) for the Mayor to vote last be removed, given the Town's routine use of voting equipment that reveals all votes simultaneously?

The Charter states as follows:

Sec. 5.2. - Functions and duties of Mayor-Commissioner.

The Mayor-Commissioner . . . shall perform the following functions:

(1) The Mayor-Commissioner shall preside at all meetings of the Town Commission and perform all duties consistent with his/her office, and shall have a voice and vote in the proceedings of the Town Commission, but no veto power. **The Mayor-Commissioner shall vote last upon the roll call of Commissioners.**

The Charter only requires the Mayor to vote last upon a roll call vote. Votes using the Town's voting technology are simultaneous, and are not individually called out in a roll call. Therefore, it appears that it is not legally essential to make this change. However, the Board may choose to recommend this change to the Town Commission. In February, the Board voted 4-3 to consider proposing this change to the Town Commission.

2. Should the description of qualifications for the Town Manager be revised to be more flexible?

The Charter states as follows:

Sec. 5.3. - Town Manager—Appointment, qualifications and compensation

...The Town Manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local public management including, a graduate degree with a concentration in **public administration, public affairs, public policy, or public finance** and two (2) years' experience as an appointed city manager or county manager, or four (4) years' experience as an assistant or deputy city manager or assistant or deputy county manager.

The Board discussed the fact that the current Town Manager has a degree in political science, and questioned whether the specific listing of types of degrees is too restrictive because different colleges and universities may choose to apply different labels to degrees with substantially the same curriculum. The Board also discussed the prior experience requirements, and noted the relevance of other kinds of managerial experience including private sector experience. The Board requested suggested language to broaden the requirements for this position.

One potential revision to Section 5.3 that would generally provide more flexibility is to add the following to the end of the current section quoted above:

Alternatively, the Town Manager shall be appointed on the basis of education and experience in the accepted competencies and practices of local public management that is determined by the Town Commission to be commensurate to those listed in the prior sentence.

Or the change could be narrowed so that it allows consideration of commensurate qualifications only as to education or experience, if the Board desires to keep one or other as provided in the current Charter.